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[redacted]

6 May 1952

Deputy Chief, Medical Staff
Office of General Counsel

Eligibility of Contract Agents for Medical Benefits

1. You have concluded in your memorandum to this office dated 28 March 1952 that: "a. A blanket policy should be adopted in regard to all 'contract agents' which will clearly define their eligibility for or positive denial of medical benefits" and "b. If it is decided that 'contract agents' are entitled to such benefits, or if by legal loopholes or coercion they might obtain same, all such individuals should have a documented physical examination filed in their records prior to entrance on duty."

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2. You pointed out that there are certain categories of personnel, such as contract agents in general and the part-time employee dependent wives of [redacted] (who have no definite contractual agreements), who, although they have in the past been presumed to be ineligible for medical benefits, may nevertheless in fact have claims against the U. S. Government which can ultimately be proven. It is our understanding that there is no established procedure regarding EOD physical examinations for such people at the present time, and in view of potential liability to the Government resulting from their employment, you have requested this office to make an investigation and appropriate proposals pertinent to the problem.

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4. While the Bureau of Employees Compensation will accept our statement - in fact a certification - that an individual is or is not an employee of the Government there may be occasions where an individual will pursue his case beyond the Bureau into the Court of Claims or other appropriate tribunal. The latter possibility should not be considered part of the normal pattern of activities on which we must base our procedures. In order to act with any degree

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of certainty, the reasonable place to draw the line is that between an independent contractor and an employee. In the final analysis, the person is either one or the other. If he falls within any of those categories of personnel entitled to employee benefits, including death and disability, the agency would be derelict in its duty to determine potential liability by omitting an EOD physical examination. By the same token, we should assume that the liability is not even potential with regard to categories of independent contractors to whom we have not by terms of the contract itself proffered any entitlement to such benefits.

5. The statements above reflect our position regarding the purely legal necessity for an EOD physical examination. Aside from this, it appears to us that there is always the pragmatic desirability of an EOD physical examination simply to determine the physical capabilities of an individual to perform the work for which he is hired. In the case of independent contractors who are not extended death and disability benefits by terms of their contract, the need for a physical examination at the time of employment would seem to depend largely on the nature of the work involved and certain attendant practical considerations. Thus, an independent contractor, in his relationship with the Government, may be an employee of a cover organization. If the location or nature of his duties is hazardous, it would be only common prudence to determine his physical condition at the time he entered into employment in order to obviate later claims of a spurious nature. Some extension beyond the narrow limits of legal liability may therefore be suggested.

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